

**Levin-Epstein & Associates, P.C.**

1 Penn Plaza, Suite 2527  
New York, NY 10119  
Tel: (212) 792-0046  
Fax: (212) 563-7108  
joshua@levinepstein.com

---

December 1, 2017

Honorable Allyne R. Ross  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Davis v. The Hain Celestial Group, Inc. et al.  
Case No. 1:17-cv-05191(ARR)(RML)

Dear Judge Ross:

On behalf of plaintiff, this letter is in response to defendants' letter of November 21, 2017 (Doc. 9) requesting a pre-motion conference to seek dismissal under Fed. R. Civ. P. 12(b)(6) and in accordance with your Individual Rules, Section III (A), requiring the non-moving party to file a response within seven (7) business days from service thereof.

Your Honor's Individual Rules specify that "a premotion letter requesting permission to file a motion under those [Rules 12 and 56] rules shall be considered the equivalent of the motion itself." As such, plaintiff intends to amend the complaint "as a matter of course" pursuant to Fed. R. Civ. P. 15(a)(1)(B) (allowing amendment within "21 days after service of a motion under Rule 12(b)"). *M.E.S., Inc. v. Liberty Mut. Sur. Group.*, No. 10-cv-0798, 2014 WL 46622 (E.D.N.Y. Jan. 6, 2014), \*2 (finding that Rule 15(a)(1)(B) permits plaintiff's filing of an amended complaint, "as of right" in response to defendant's request for a pre-motion conference) quoting *Matana v. Merkin*, No. 13-cv-1534, 2013 WL 6147700, at \*2 n.1 (S.D.N.Y. Nov. 22, 2013).

While plaintiff does not concede the points of fact and law raised in defendants' pre-motion letter, an amended complaint will sharpen certain issues for the Court. Moreover, an amended complaint at this point "allows for the more efficient use of the Court's time and resources because the Court need only meet with the Parties once...and the need for the motion may be obviated if the amended pleading deals with Defendants' concerns." *M.E.S., Inc.*, 2014 WL 46622 at \*2.

Plaintiff shall file and serve its amended complaint on or before Wednesday, December 13, 2017, as this date is twenty-one (21) days after the date on which defendants filed their pre-motion letter, excluding the day of the event that triggered the period. Fed. R. Civ. P. 6(a)(1)(A). Thank you.

Respectfully Submitted,

/s/ Joshua Levin-Epstein  
Joshua Levin-Epstein